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October 9, 2008

VIA EMAIL

Carol Lumb
Department of Community Development,
6300 Southcenter Blvd., Suite 100, Tukwila, WA 98188,
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**Re: Planning Commission Public Hearing – October 9, 2008
Shoreline Master Program update**

Dear Carol:

This firm represents Schneider & Schneider L.L.C. Our client owns the South Center Plaza building, located at 14900 Interurban Avenue South in Tukwila. The building is 57,029 square feet and is used for multi-tenant office space. The property is located on the Green River.

We are writing on behalf of Schneider & Schneider L.L.C. to comment on the City's draft Shoreline Master Program update (SMP). There are substantial problems with the current draft, including:

(1) The SMP is ambiguous as to what triggers the standards in section 9. Section 9.1 states that the "following standards apply to," followed by a list including "change in building occupancy," and "paving." Yet, the rest of section 9 contains its own triggers. For example, 9.9 has parking requirements for "all development," and 9.10(C) requires replacement of invasive vegetation "for any development or redevelopment." The term "development" is a defined term in the City Code and has an entirely different meaning than the list under 9.1. Certainly, the term "development" in the code does not include a change in building occupancy. Nor does it include paving. The City cannot possibly intend to require replacement of all invasive vegetation on the riverbank any time a building owner gets a new tenant or paves a parking lot. Section 9.1 is ambiguous and unnecessary as the rest of section 9 lists the trigger for each standard. Section 9.1 should be deleted.

(2) With regard to section 9.10(C), even if only triggered by "development" as that term is used in the existing code, the landscaping requirements are so onerous and

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expensive that they will prevent most new development, prevent enlargement of existing structures, and will even prevent property owners from making structural repairs to their buildings. To perform replanting work along the bank apparently requires four separate permits, and is prohibitively expensive.

(3) The City lacks any scientific basis for expanding the buffers to 100 - 125 feet. Moreover, the buffers are also an illegal tax under Citizens Alliance v. King County, 145 Wn. App. 649. The City's change is going to leave the City awash in expensive litigation, while further crimping its tax base due to the new onerous limitations preventing shoreline development and redevelopment, and even certain repairs.

(4) The change in buffers from the existing 40 feet to up to 100 feet in the area of my client's building will make my client's building, and many other's, non-conforming. This will cause blight, as many properties in need of redevelopment to survive will not be able to do so. Additionally, an earthquake could destroy many structures "to an extent of more than 50% of [the] replacement value" (TMC 18.70.050), particularly since so many older buildings exist along the river. In such an event, since the proposed SMP would render so many structures non-conforming, the riverfront would become a Mecca of blight with abandoned buildings. For this reason, should the buffers be increased to 100 feet or more, TMC 18.70.050 should be changed to something along the lines of the following code provision, taken from the Sammamish Municipal Code:

"A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed may be re-established or reconstructed if:

- (1) The nonconforming use, structure, or site improvement that previously existed is not expanded
- (2) A new nonconformance is not created; and

The use has not been discontinued for more than 12 months prior to its re-establishment, or the nonconforming structure or site improvement is reconstructed pursuant to a complete permit application submitted to the department within 12 months of the occurrence of damage or destruction."

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If the City does not change the 50% provision, and proceeds to render so many properties non-conforming, an earthquake will lead to blight and possibly massive liability for the city for takings claims. Moreover, as written, the change to non-conforming structures seriously impairs the value, marketability and insurability of the properties along the river.

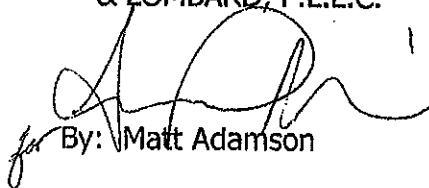
(5) The City has not performed an economic analysis of its proposed changes.

(6) The City has not allowed for sufficient public participation in the existing draft. Additionally, the public should be given the opportunity to comment on any changes made or recommended by the planning commission.

Thank you for considering our concerns. We hope that the City will work with the public to arrive at a plan that protects the environment while also protecting economic growth and private property rights in Tukwila.

Regards,

JAMESON BABBITT STITES
& LOMBARD, P.L.L.C.


for By: Matt Adamson

cc: Client